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In re Application of	:	
Henryk Borowy-Borowski et al.	:	
Application No. 10/648,371	:	DECISION ON PETITION
Filed: August 27, 2003	:	UNDER 37 C.F.R. §1.181
Attorney Docket No.: 10975-1C	:	
Title: WATER-SOLUBLE	:	
COMPOSITIONS OF BIOACTIVE	:	
LIPHILIC COMPOUNDS	:	

This is a decision on the petition filed on November 6, 2006, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed October 6, 2005, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue or publication fees¹. Accordingly, the above-identified application became abandoned on January 7, 2006. A Notice of Abandonment was mailed on November 28, 2006.

With the present petition, Petitioner has alleged that the mailing was not received. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication

¹ See MPEP §710.02(e).

would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement².

Petitioner has met the requirements of Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), in that he has asserted that the Office communication was not received, that he has searched both the file jacket and the docket record, and he has included a copy of the latter.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that the mailing was not received.

Accordingly, the petition under 37 C.F.R. §1.181(a) is GRANTED. The holding of abandonment is WITHDRAWN.

The Technology Center will be notified of this decision. The Technology Center's support staff will re-mail the communication of October 6, 2005, and will set a new period for response.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225³. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

² See MPEP 711.03(c).

³ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).